Alameda Center for Rehabilitation and Healthcare, Inc. *and* 1199 Service Employees International Union, United Healthcare Workers East, New Jersey. Cases 22–CA–180564 and 22–CA–188462

October 14, 2020

SUPPLEMENTAL DECISION AND ORDER REMANDING

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On March 20, 2020, Administrative Law Judge Benjamin W. Green issued the attached supplemental decision.[1] The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the supplemental decision and the record in light of the exceptions and briefs[2] and has decided to affirm the judge's rulings, findings, and conclusions as modified below and to remand the proceeding for further appropriate action consistent with this Supplemental Decision and Order Remanding.

At issue in this compliance proceeding is the amount owed by the Respondent for its unlawful failure to withhold employees' 401(k) contributions and to make matching employer contributions to the 401(k) plan from April 17, 2016, until January 7, 2017.[3]

The judge determined that 10 employees are entitled to remedial relief and that the Respondent is obligated to make them whole for both their employee 401(k) contributions and the Respondent's matching 401(k) contributions during the delinquent period, plus the investment growth the amounts would have experienced during that period.[4] The judge directed that those payments be made to the employees' 401(k) plan.

We agree, for the reasons set forth by the judge, that the General Counsel established a reasonable formula for determining which employees are entitled to remedial relief. We further agree that remedial relief appropriately includes making those employees whole for the delinquent 401(k) matching contributions the Respondent unlawfully failed to make on their behalf, plus the investment growth the amounts would have experienced.[5] This relief is appropriate as it restores employees to the status quo with respect to the matching contributions that would have obtained but for the Respondent's unfair labor practice. See *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 194 (1941).

We reverse, however, the judge's additional finding that remedial relief properly includes the Respondent's contributing, from its own funds, the amounts employees would have contributed to the 401(k) plan. While the Respondent unlawfully failed to withhold those employee contributions and remit them to the 401(k) plan, the Respondent paid employees those amounts in their wages. We find that ordering the Respondent to pay those amounts again would be punitive and a windfall to employees, and we decline to award that remedy. See Taracorp Inc., 273 NLRB 221, 223 (1984) ("[T]he Board may not order punitive remedies . . . . Nor should our remedies serve as a windfall to employees or employers."); see also *Service Roofing Co.,* 200 NLRB 1015, 1016–1017 (1972).[6]

We do find remedial relief appropriate, however, to compensate employees for the investment growth they lost on their 401(k) contributions due to the Respondent's unlawful failure to deduct and remit those amounts to the 401(k) plan. The gravamen of the unfair labor practice here is the Respondent's failure to provide a 401(k) investment vehicle for employees during the delinquent period. Providing relief for lost 401(k) investment growth on the missed employee contributions[7] compensates employees for their loss without a punitive, windfall payment of any kind.

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[1] On April 3, 2020, the judge issued an additional supplemental order to correct inadvertent miscalculations in the compliance specification.

[2] We reject the General Counsel's contention that the Board should disregard the Respondent's exceptions and brief because they fail to comply with Sec. 102.46(a)(1) and (2) of the Board's Rules and Regulations. We find that the Respondent's exceptions and brief substantially comply with the Board's Rules and Regulations and are sufficient to warrant Board consideration.

[3] On October 26, 2017, Administrative Law Judge Kenneth W. Chu issued a decision in the underlying unfair labor practice case, finding that the Respondent's conduct violated Sec. 8(a)(5) and (1) and issuing a recommended Order. See *Alameda Center for Rehabilitation & Healthcare*, 2017 WL 4841976. On December 11, 2017, the Board adopted Judge Chu's findings and recommended Order in the absence of exceptions. See 2017 WL 6350170. On August 10, 2018, the Court of Appeals for the Third Circuit summarily enforced the Order.

[4] The 10 employees are Maribel Gonzalez, Faimy Louis Jean, Guernelle Mondesire, Margaret Ogondare, Neha Patel, Nidhi Patel, Gilma Rivera, Alucienne Sainte, Lamercie St. Juste, and Enid Rivera.

[5] We agree with the judge that all 10 employees are entitled to the full amount of the Respondent's matching contributions. We further agree that the General Counsel's method for calculating investment growth is reasonable here. See *Lou's Transport, Inc.*, 366 NLRB No. 140, slip op. at 8 (2018).

[6] Relief for such amounts shall accordingly be deleted on remand.

[7] We agree with the judge's findings on the amounts each of the 10 employees would have contributed to the 401(k) plan had it been available, including his findings regarding employees Gonzalez, Jean, and Gilma Rivera.

We shall accordingly remand this proceeding for recalculation of the amounts owed the 401(k) plan for each of the 10 employees named herein consistent with this Supplemental Decision and Order Remanding.

ORDER

IT IS ORDERED that this proceeding is remanded to the Regional Director for Region 22 for the purpose of recalculating the amounts owed by the Respondent to the 401(k) plan on behalf of the 10 employees and for further appropriate action.

Dated, Washington, D.C. October 14, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Sharon Chau, Esq., for the General Counsel.
David F. Jasinski, Esq. (Jasinski, P.C.), for the Respondent.
William Massey (Gladstein, Reif & Meginniss, LLP), for the Charging Party.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

BENJAMIN W. GREEN, ADMINISTRATIVE LAW JUDGE. This compliance proceeding was tried before me in Newark, New Jersey, on January 7, 2020, pursuant to an amended compliance specification issued by Region 22 of the National Labor Relations Board.

On October 26, 2017, Administrative Law Judge Kenneth W. Chu issued a decision wherein he found that the Respondent violated Section 8(a)(5) and (1) of the Act by withholding employee contributions and employer matching contributions to a 401(k) plan.[1] Judge Chu's decision was adopted by the Board on December 11, 2017 and the Board order was enforced by the Third Circuit Court of Appeals on August 10, 2018.

At issue in this supplemental compliance proceeding is the dollar amount of 401(k) contributions the Respondent shall be ordered to make, if any, on behalf of certain employees for the pay dates between May 5, 2016, and January 12, 2017.[2] The compliance specification included, in "Attachment A—Revised 1/7/2020," a table reflecting certain Regional compliance calculations. The same table has been largely recreated and appended hereto as "Attachment A."[3]

In making my findings, analysis, and conclusions, I have considered the entire record and briefs filed by the General Counsel and the Respondent.

Facts

As described in Judge Chu's decision, on April 21, 2016, the Respondent purchased from AristaCare at Alameda (AristaCare) the nursing home and rehabilitation center at 303 Elm Street, Perth Amboy, New Jersey. 1199 Service Employees International Union, United Healthcare Workers East, New Jersey (Union) represented a unit of LPNs employed at this facility before and after the sale. The Union and AristaCare were parties to a collective-bargaining agreement that included the following provision in Article 31.1:

> Each employee who has completed at least one (1) years of continuous service and worked 1,000 hours the previous year shall be eligible to participate in the 401(k) Plan. Employer shall match 50% of each employee's contribution, up to a maximum of 3% of the employee's gross salary.

On February 11, 2016, in anticipation of the sale, the Respondent signed a "Status Quo Agreement" adopting the terms of the Union's contract with AristaCare. Upon the sale of the facility in April 2016, AristaCare's 401(k) plan was terminated. The Respondent did not obtain a replacement 401(k) plan until January 2017.

As noted above, the Board adopted Judge Chu's decision that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to immediately secure a replacement 401(k) plan when the predecessor's plan was terminated. Judge Chu noted in his decision that the General Counsel sought to hold the Respondent liable for employee contributions as well as its own matching contributions but reserved this issue for resolution in a compliance proceeding.

In calculating the monetary remedy, Regional compliance officer Rhonda Fricke did not have access to the 401(k) plan account statements or payroll records for unit employees while they were employed by AristaCare. Fricke only had access to the Respondent's payroll records beginning April 2016.

The Respondent's first pay period, for the pay date May 5, 2016, reflects deductions from the gross earnings of certain

[1] Judge Chu also found that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to bargain with the union bargaining representative of a unit of licensed practical nurses (LPN). However, the remedy of that violation is not in dispute and at issue here.

[2] These pay dates cover pay periods from April 17, 2019 (the first day of the Respondent's first pay period) to January 7, 2017 (the last day of the last pay period for which the Respondent made no contributions to a 401(k) plan). The Respondent began making appropriate contributions to a 401(k) plan on pay date January 26, 2017, for the pay period January 8 to 21, 2017.

[3] The appended table contains slightly different totals for columns J, L, and M in the amounts of $807.23, $1524.46, and $29,091.31, respectively, while the Region's table contains totals of $807.22, $1524.45, and $29,091.33 for the same columns.

employees for 401(k) contributions.[4] The second pay period, for the pay date May 19, 2016, reflects refunds to employees of the previous pay period's 401(k) deductions because the old AristaCare 401(k) plan had been terminated and had not been replaced by the Respondent with a new one. By noting these refunded deductions in the Respondent's payroll, the Region identified employees who participated in AristaCare's 401(k) plan and the percentage of gross earnings each employee contributed. The payroll records also reflect whether and how much certain employees contributed to the Respondent's 401(k) plan once a replacement plan was obtained and deductions were made from employees' pay beginning January 26, 2017 (for the pay period January 8 to 21, 2017). (GC Exh. 5.)

The General Counsel contends that the Respondent must make contributions to the 401(k) plan on behalf of employees who satisfied one of the following criteria: (1) They participated in AristaCare's 401(k) plan prior to the sale and/or (2) they immediately began contributing to the Respondent's 401(k) plan when it became available in January 2017. Thus, under the Region's criteria, employees were not entitled to a monetary remedy if they did not participate in the AristaCare plan and did not immediately participate in the Respondent's plan when it became available. If an employee contributed a different percentage of gross earnings to the old and new 401(k) plans, the Region used the presale percentage to calculate a remedy rather than the postsale percentage.

The compliance specification identifies 10 employees who are allegedly entitled to back contributions under the criteria described above.[5] Among those ten, the following nine employees qualified by virtue of their participation in AristaCare's 401(k) plan: Maribel Gonzalez, Faimy Louis Jean, Guernelle Mondesire, Margaret Ogondare, Neha Patel, Nidhi Patel, Gilma Rivera, Alucienne Sainte, and Lamercie St. Juste. Six of these employees also qualified because they immediately participated in the Respondent's plan when it became available in January 2017. The three employees who participated in the AristaCare plan but did not immediately participate in the Respondent's plan when it became available were Ogondare, Neha Patel, and Mondesire. Ogondare and Neha Patel began contributing to the new 401(k) plan in July 2017 and April 2018, respectively, while Mondesire never contributed to the Respondent's plan.

Among the employees for whom a monetary remedy is sought, only Enid Rivera did not participate in the old AristaCare 401(k) plan. Rivera qualified for a remedy under the Region's criteria because she immediately began contributing to the Respondent's plan when it became available in January 2017.

Among the employees who made contributions to both the old and new plans, the following five employees contributed a greater percentage of gross pay to the old AristaCare plan than the new Respondent plan:[6]

Last Name	First Name	% of Gross Pay Contribution to AristaCare Plan	% of Gross Pay Contribution to Respondent Plan
Gonzalez	Maribel	4%	3%
Louis Jean	Faimy	4%	3%
Rivera	Gilma	5%	3%
Sainte	Alucienne	5%	3%
St. Juste	Lamercie	10%	5%

For all the employees who allegedly qualify for a monetary remedy, the General Counsel seeks compensation for the Respondent's matching contributions as well as any contributions the employees would be expected to have made on their own behalf during the relevant period. The General Counsel also seeks compensation for growth of such funds at an appreciation rate pegged to the S&P 500 Index and calculated on a compounded quarterly basis. Thus, for each employee, by quarter on a compounded basis, the compliance calculation took the total contribution percentage (i.e., percentage of employee contributions to the AristaCare plan + percentage of employer matching contributions), multiplied it by the employee's gross quarterly earnings, and added appreciation based on quarterly S&P 500 growth as reflected in the Vanguard 500 fund return rates. The Respondent has not offered an alternative calculation of its liability.

Analysis

The General Counsel bears the burden of establishing a monetary remedy, while the Respondent may establish affirmative defenses to reduce its liability. *International Brotherhood of Teamsters Local 25*, 366 NLRB No. 99 (2018), citing *Millennium Maintenance & Electrical Contracting*, 344 NLRB 516, 517 (2005) and *Chem Fab Corp.*, 275 NLRB 21, 21 (1985), enfd. mem. 774 F.2d 1169 (8th Cir. 1985). To meet her initial burden, "the General Counsel need show only that the gross backpay amounts contained in the compliance specification were reasonable and not an arbitrary approximation." Id. citing *Performance Friction Corp.*, 335 NLRB 1117 (2001), and *Mastell Trailer Corp.*, 273 NLRB 1190, 1190 (1984). Further, "when uncertainty arises concerning the appropriate amount of make-whole relief, the uncertainty is normally, and appropriately, resolved in favor of the injured party and against the respondent, as the wrongdoer." *Lou's Transport, Inc.*, 366 NLRB No. 140 slip op. at p. 7 (2018); *Webco Industries, Inc.*, 340 NLRB 10, 11 (2003); *Kansas Refined Helium Co.*, 252 NLRB 1156, 1157 (1980), enfd. sub nom. *Angle v. NLRB*, 683 F.2d 1296 (10th Cir. 1982).

The Respondent contends that it cannot be contractually required to match employee contributions absent evidence that

[4] These deductions are identified in the payroll records (GC Exh. 5) by the code "S4."

[5] The chart appended hereto as "Attachment B" includes the names of each employee, their gross earnings for pay dates May 5, 2016 and January 26, 2017, the amount deducted from each employee's paycheck for 401(k) contributions on those pay dates, and the percentage of gross pay each employee contributed.

[6] The Region calculated the presale contributions of Gonzalez, Louis Jean, and Gilma Rivera as 3 percent, 3 percent, and 2 percent of gross earnings, respectively. However, for Gonzalez, Louis Jean, and Gilma Rivera, my calculations indicate presale contribution rates of 4 percent, 4 percent, and 5 percent, respectively. (See Attachments A and B.)

employees made or attempted to make such contributions (or set aside equivalent savings). According to the Respondent, the Region's calculation is unduly speculative and based on hypotheticals. The Respondent cites federal court cases for the proposition that "a contract is not to be written by the Court, even where the Court may think the outcome is inequitable." (R. Br. p. 7–8.) However, this is not an action for breach of contract. It is a compliance proceeding based upon a statutory finding that the Respondent unlawfully changed unit employees' terms and conditions of employment, and it is well settled that the Board has broad discretion to fashion appropriate remedies. See *Spectrum Juvenile Justice Services*, 368 NLRB No. 102 (2019). The Region's compliance methodology does not seek to rewrite the collective-bargaining agreement, but to interpret its terms under the particular circumstances of this case in crafting a reasonable remedy. Recently, the Board adopted a judge's compliance finding that a discriminatee was entitled to 401(k) contributions upon an inference that the discriminatee would have contributed to the fund during the backpay period because he did so when he was employed by the Respondent and with an interim employer. *Lou's Transport, Inc.*, 366 NLRB No. 140 slip op. at p. 7 (2018). See also *Webco Industries, Inc.*, 340 NLRB 10, 11 (2003).

In rejecting the Respondent's defense, I note that employees were never responsible for submitting contributions to a 401(k) plan or an equivalent savings vehicle as such funds were automatically deducted from employee paychecks and submitted to the plan by AristaCare. Employees were not required to start doing so because the Respondent failed in its obligation to continue deducting contributions once it purchased the facility.

Lastly, it is the Respondent that relies on excessive speculation and hypotheticals. In *Lou's Transport, Inc.*, 366 NLRB No. 140 slip op. at p. 7 (2018), a compliance discriminatee was not denied reinstatement and his backpay was not tolled even though he stated in the underlying ULP case that he did not want to go back to work for the respondent. The discriminatee was entitled to a full remedy because his testimony in this regard was not offered in response to a valid offer of reinstatement. Similarly here, the Respondent's employees did not have access to a 401(k) plan during the backpay period and it is irrelevant, as hypothetical, what they did or did not do in the absence of such a plan. Rather, as in *Lou's Transport*, the better method of determining whether employees would have contributed to a 401(k) plan during the relevant backpay period is by looking at whether and to what extent they participated when such plans were actually available.

Matching Funds

Of the 10 employees named in the compliance specification, I find that the following six are entitled to employer matching contributions in the amount of 1.5 percent of gross earnings because they contributed at least 3 percent of gross earnings to 401(k) plans when those plans were available before and after the sale of the facility: Gonzalez, Louis Jean, Nidhi Patel, Gilma Rivera, Sainte, and St. Juste. Having participated in the AristaCare 401(k) plan through April 2016 and the Respondent's 401(k) plan beginning January 2017, there is no reason to believe that these employees would not have done the same during the interim backpay period. Further, it is reasonable to infer that the employees would have continued to contribute at least 3 percent of gross earnings during the backpay period in order to maximize employer matching contributions (1.5 percent) under Article 31.1 of the Union's collective-bargaining agreement with AristaCare, as assumed by the Respondent in the February 11, 2016 status quo agreement. See *Lou's Transport, Inc.*, 366 NLRB No. 140 (2018).

I also find that the following three employees who contributed over 3 percent of gross earnings to the AristaCare plan before the sale are entitled to employer matching contributions of 1.5 percent of gross earnings even though they did not immediately contribute to the Respondent's plan when it became available in January 2017 (or at all): Mondesire, Ogondare, and Neha Patel. It is reasonable to infer that these employees would have continued to contribute to the Respondent's plan in April 2016 if such contributions continued to be deducted from their paychecks. It is not overly surprising that certain employees may have grown accustomed to collecting a higher net wage and, therefore, did not immediately (or ever) elect to resume making 401(k) contributions when offered the opportunity to do so after an 8-month hiatus. Such an occurrence does not logically negate the inference upon which the remedy is based.

For much the same reason, I find that the backpay computation is reasonable to the extent it relies on the percentage of gross pay employees contributed to AristaCare's 401(k) plan as opposed to the gross pay percentage of employee contributions to the Respondent's plan (if different). If the Respondent had seamlessly obtained a 401(k) plan and continued deducting the contribution percentage each employee elected for the predecessor plan, there is little reason to believe employees would have suddenly reduced that election. Conversely, employees might have decided to reduce their contribution after a hiatus in which they became accustomed to a higher net wage. As noted above, such an occurrence does not logically negate the inference upon which the remedy is based.

Lastly, I find that Rivera is entitled to employer matching contributions of 1.5 percent of gross earnings even though she did not participate in AristaCare's 401(k) plan. Rivera contributed 3 percent of gross pay to the Respondent's plan when it became available in January 2017 and it is reasonable to conclude that she would have made the same election if she was presented with the option to do so in April 2016.

While evidence that certain employees did not make contributions in April 2016 or January 2017 (or did not contribute the same percentage of gross earnings) may add a degree of ambiguity as to whether and how much those employees would have contributed to their 401(k) plans during the backpay period, such uncertainties are resolved against the wrongdoer in a compliance proceeding. *Lou's Transport, Inc.*, 366 NLRB No. 140 slip op. at p. 7 (2018); *Webco Industries, Inc.*, 340 NLRB 10, 11 (2003); *Kansas Refined Helium Co.*, 252 NLRB 1156, 1157 (1980), enfd. sub nom. *Angle v. NLRB*, 683 F.2d 1296 (10th Cir. 1982).

Employee Contributions

The General Counsel contends that "the Board has consistently ordered employers that have caused employees to lose the opportunity to contribute to a 401(k) plan to pay both the employees contributions . . .." (GC Br. p. 2.) The Respondent contends that such an order would be punitive and an employee windfall beyond the standard make whole remedy.

In support of its position, the General Counsel cites *Republic Windows & Doors, LLC*, 356 NLRB 1449, 1450, 1452 & fn. 6 (2011), *Kane Steel Co.*, 355 NLRB No. 49 at 3–4 & fn. 3 (2010), and *Webco Industries*, 340 NLRB 10, 12–13; & Appendix, 16–17 (2003). The cited footnotes in *Republic Windows & Doors* and *Kane Steel* are not applicable to the current situation. In *Republic Windows & Doors*, the Board stated in footnote 6:

> To the extent that an employee has made personal contributions to his or her 401(k) account that have been accepted by the plan in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

This footnote, and others like it, do not stand for the asserted proposition that a Respondent must pay employees' share of contributions in addition to matching funds. The record contains no evidence that employees made personal contributions to any 401(k) plan and the compliance calculation does not use employee contributions as a setoff to other amounts owed. In *Lou's Transport, Inc.*, 366 NLRB No. 140 (2018), the compliance specification provided for payment by the employer of an employee's 401(k) contributions, but those contributions were deducted from total gross backpay. The judge and the Board adopted this calculation.[7]

However, in *Republic Windows & Doors*, where the employer violated Section 8(a)(5) and (1) of the Act by failing "to remit unit employees' contributions to their 401(k) retirement accounts and failing to make matching contributions on those accounts[,]" the Board "order[ed] the Respondent to make all such contributions . . .." 356 NLRB at 1452. Likewise, in *Webco Industries*, 340 NLRB 10 (2003), the judge and Board adopted a Regional compliance calculation which included the award of employee contributions in the amount of 12 percent of gross earnings, which the discriminatee made before his unlawful discharge. These decisions admittedly offer no explanation for orders that appear to involve a windfall beyond the standard make whole remedy. However, it could be argued that, if employees spent all the money they were paid, they would not be in a position to take advantage of 401(k) tax benefits by making catch-up contributions. Indeed, the process of deducting contributions from an employee's paycheck before that money can be spent is a different method of forced savings than having an employee go out of pocket to make contributions from personal savings. In any event, whatever the rationale, the Board has ordered similarly situated employers to pay the employees' share of 401(k) contributions and I will do the same.

Method of Calculating Growth of 401(k) Contributions

The Region determined the growth of back contributions by pegging them to the S&P 500 index, as reflected by return rates of the Vanguard 500 fund, and compounding the calculation on a quarterly basis. Recently in *Lou's Transport, Inc.*, 366 NLRB No. 140, slip op. at p. 8 (2018), the Vanguard 500 return rates were used for such a purpose. The Respondent did not contest this method of calculation and did not provide an alternate calculation of its own. Accordingly, I find the compliance calculation to be reasonable in this respect.

SUPPLEMENTAL ORDER

IT IS HEREBY ORDERED that the Respondent, Alameda Center for Rehabilitation and Healthcare Inc., its officers, agents, successors, and assigns, shall make Maribel Gonzalez, Faimy Louis Jean, Guernelle Mondesire, Margaret Ogondare, Neha Patel, Nidhi Patel, Enid Rivera, Gilma Rivera, Alucienne Sainte, and Lamercie St. Juste whole by submitting to the 401(k) plans of those employees the employee contributions and matching contributions which should have been made on pay dates between May 5, 2016 and January 12, 2017, using the method of the compliance specification. However, since the compliance specification appears to include inadvertent miscalculations of the percentage of gross earnings that Maribel Gonzalez, Faimy Louis Jean, and Gilma Rivera contributed to the AristaCare 401(k) plan, the calculation for those employees should be redone.

Dated, Washington, D.C. March 20, 2020

[7] This calculation was not contested by the Respondent because, presumably, it resulted in a reduction of the Respondent's liability.

ATTACHMENT A

A	B	C	D	E	F	G	H	I	J	K	L	M
Name	% of gross pay deducted for 401(k) employee contribution	% Employer Match Owed	% Total deduction and ER match owed	401(k) owed for 2nd QTR 2016	Lost Investment for 2nd QTR 2016	401(k) owed for 3rd QTR 2016	Lost Investment for 3rd QTR	401(k) owed for 4th QTR 2016	Lost Investment for 4th QTR 2016	401(k) owed for 1st QTR 2017	Lost Investment for 1st QTR 2017	TOTAL
Gonzalez, Maribel	3%	1.50%	4.5%	$392.00	$7.45	$486.00	$29.31	$603.00	$49.33	$98.00	$92.08	$1,757.16
Luis jean, Faimy	3%	1.50%	4.5%	$362.00	$6.88	$478.00	$28.03	$510.00	$45.01	$126.00	$86.04	$1,641.96
Mondesir, Guernelle	5%	1.50%	6.5%	$716.00	$13.60	$923.00	$54.70	$1,071.00	$90.29	$207.00	$170.08	$3,245.68
Ogundare, Margaret	10%	1.50%	11.5%	$803.00	$15.26	$809.00	$53.86	$1,359.00	$98.80	$335.00	$192.11	$3,666.03
Patel, Neha	5%	1.50%	6.5%	$675.00	$12.83	$964.00	$54.68	$1,265.00	$96.57	$197.00	$180.56	$3,445.63
Patel, Nidhi	5%	1.50%	5.5%	$739.00	$14.04	$1,010.00	$58.36	$1,401.00	$104.73	$187.00	$194.33	$3,708.46
Rivera, Enid	3%	1.50%	4.5%	$401.00	$7.62	$500.00	$30.08	$560.00	$48.71	$126.00	$92.54	$1,765.94
River, Gilma	2%	1.00%	3.0%	$173.00	$3.29	$248.00	$14.04	$404.00	$27.38	$89.00	$53.02	$1,011.72
Sainte, Alucienne	5%	1.50%	6.5%	$744.00	$14.14	$1,013.00	$58.62	$1,260.00	$100.42	$228.00	$189.03	$3,607.20
St. Just, Lamercie	10%	1.50%	11.5%	$1,106.00	$21.01	$1,588.00	$89.87	$1,687.00	$145.99	$329.00	$274.67	$5,241.53
TOTALS				**$6,111.00**	**$116.11**	**$8,019.00**	**$471.55**	**$10,120.00**	**$807.23**	**$1,922.00**	**$1,524.46**	**$29,091.31**

NOTES

S&P Quarterly Returns for Relevant Period

2nd QTR 2016	1.90%
3rd QTR 2016	3.31%
4th QTR 2016	3.25%
1st QTR 2017	5.53%

ATTACMENT B

		AristaCare 401(k) Plan					Respondent 401(k) Plan				
Last Name	**First Name**	**Pay Date**	**GC 5 p.**	**Gross Pay**	**Cont.**	**Cont. %**	**Pay Date**	**GC 5 p.**	**Gross Pay**	**Cont.**	**Cont. %**
Gonzalez	Maribel	5/5/2016	62	$947.45	$37.90	4%	1/26/2017	65	$2,121.15	$63.63	3%
Louis Jean	Faimy	5/5/2016	128	$1,276.60	$51.06	4%	1/26/2017	131	$1,906.84	$57.21	3%
Mondesire	Guernelle	5/5/2016	143	$1,659.97	$83.00	5%	1/26/2017	147	N/A		
Ogondare*	Margaret	5/5/2016	154	$1,284.31	$128.43	10%	1/26/2017	157	$1,928.32	$192.83	10%
Patel**	Neha	5/5/2016	185	$1,559.36	$77.97	5%	1/26/2017	193	$2,396.42	$119.82	5%
Patel	Nidhi	5/5/2016	195	$1,552.98	$77.65	5%	1/26/2017	198	$2,744.09	$137.20	5%
Rivera	Enid	5/5/2016	225	N/A			1/26/2017	228	$1,779.02	$53.37	3%
Rivera	Gilma	5/5/2016	235	$1,327.27	$66.36	5%	1/26/2017	238	$1,965.11	$58.95	3%
Sainte	Alucienne	5/5/2016	254	$1,650.63	$82.53	5%	1/26/2017	257	$2,892.48	$86.77	3%
St. Juste	Lamercie	5/5/2016	280	$1,584.10	$158.40	10%	1/26/2017	283	$2,335.08	$116.75	5%

*Ogandare, Margaret – Began participating in the Respondent's 401(k) plan on pay date July 27, 2017.
**Patel, Neha – Began participating in the Respondent's 401(k) plan on pay date April 19, 2017.